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# **McCullough Peaks Special Recreation Permit Programmatic Environmental Assessment**

DOI-BLM-WY-R020-2015-0023-EA

**June 2016**

"The BLM's multiple-use mission is to sustain the health and productivity of the public lands for the use and enjoyment of present and future generations. The Bureau accomplishes this by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on public lands."

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## **1.0 Purpose and Need for Action**

### **1.1 Introduction**

The McCullough Peaks area east of Cody, Wyoming, contains a nationally recognized wild horse herd occupying an approximately 120,344 acre Herd Management Area (HMA), which offers abundant opportunities for wild horse and wildlife viewing. Contained within the area is the nearly 24,570 acre McCullough Peaks Wilderness Study Area (WSA).

The Bureau of Land Management (BLM) recognizes the unique and valuable resources contained within the McCullough Peaks landscape. Due to increasing commercial activity in the area, the BLM has prepared an Environmental Assessment (EA) analyzing alternative proposals for the management of commercial activities within the McCullough Peaks landscape.

This EA will fulfill the requirements of the National Environmental Policy Act of 1969 (NEPA) that requires all federal agencies to assess impacts of their decision-making on the human environment.

### **1.2 Background**

The McCullough Peaks area has received considerable attention from the public and the BLM over the last decade. A Travel Management Plan, horse herd gather, and fertility control program were all analyzed and completed in 2004. In 2008, a horse herd gather was again analyzed. In 2009, oil and gas exploration was analyzed in the proposed Rocktober Drilling Project, which subsequently went undeveloped. A wild horse gather and equine field darting fertility control program were analyzed in 2008/2009 and 2011, respectively. Bait trapping in support of the equine fertility control program was analyzed in 2012 and 2013. Special Recreation Permits (SRP) for commercial activities within the McCullough Peaks for filming, photography, wild horse viewing, and big game outfitting have been issued throughout this period.

### **1.3 Purpose & Need**

Under the Federal Land Policy and Management Act of 1976 (FLPMA), the BLM manages for multiple resources in the McCullough Peaks area including recreation, oil and gas exploration, livestock grazing, cultural and paleontological resource, wildlife, and wildlife habitat including sage-grouse core habitat. The need for the Proposed Action is established through the BLM's responsibility under FLPMA to administer Special Recreation Permits for authorized activities on the landscape. Commercial filming, photography, and guided outfitting activities each require a Special Recreation Permit as established by the BLM's SRP Policy (43 CFR 2930).

The purpose of the Proposed Action is to improve the administration and management of Special Recreation Permits in the McCullough Peaks area in order to accommodate increasing public and commercial interest while addressing impacts on the environment stemming from increased public use.

## **1.4 Relationship to Statutes, Regulations, Plans or Other Environmental Analyses**

Completion of the environmental assessment and the decision that follows will supersede the previous EA completed in April 2012, governing the management of Special Recreation Permits in the McCullough Peaks area.

Wild horse management in the McCullough Peaks area is predicated on the Wild and Free-Roaming Horses and Burro Act of 1971. Previous actions that have been analyzed specific to the McCullough Peaks Herd Management Area and the local wild horse population include: the McCullough Peaks Wild Horse Gather Environmental Assessments (1999, 2004 & 2009), EA No. WY-020-EA9-123, EA No. WY-020-EA04-036, and WY-020-EA08-86, respectively. Theses gathers were conducted in the fall of 1999, 2004 and 2009. The EA's contain analyses of the impacts of conducting a gather and fertility control implementation in the HMA. Additionally, the impacts of fertility control in the HMA was assessed in the EA titled, *Fertility Control Application for Wild Mares in the McCullough Peaks Herd Management Area Environmental Assessment* (2011) EA No. DOI-BLM-WY-020-EA11-9. This EA examined the impacts with the implementation of a remote darting application utilizing liquid porcine zona pellucida (pzp) into select mares over one year of age.

The Greater Sage-Grouse Habitat Management Policy on Wyoming Bureau of Land Management (BLM) Administered Public Lands Including the Federal Mineral Estate Instruction Memorandum No. WY-2012-019 is the guiding document for sage-grouse management on Wyoming BLM lands.

The Proposed Action and Alternatives contained in this EA have been screened for conformance with both the Cody Record of Decision and approved Resource Management Plan signed in November, 1990, and the Cody Field Office Resource Management Plan approved as a component of the Record of Decision for the Rocky Mountain Region, signed September, 2015. This environmental assessment tiers from the Final Environmental Impact Statement prepared for the Bighorn Basin Proposed Resource Management Plan (May 2015).

## **1.5 Scoping and Public Involvement**

The Cody Field Office sought public involvement early in the NEPA process through public scoping. A thirty-day comment period commenced on June 15, 2015, and sought public input on the range of alternatives to be considered in the EA, issues to be considered in the analysis of alternatives, and impacts to natural resources potentially resulting from selection of a specific alternative.

A total of three comments from the public were received during the comment period. In general the comments expressed support for the protection of the wild horse herd and sage grouse, as well as support of the proposed Scenic Byway. Commenters differed on the issues of day-use caps for commercially guided tours and the safe distance associated with viewing the wild horse herd. There have been no changes to the alternatives for the environmental analysis based on public comments nor have there been additional issues identified for analysis as a result of the public comments received.

## **1.6 Issue Identification**

Preliminary scoping conducted by the Cody Field Office Interdisciplinary Team identified a number of issues related to resource impacts in the McCullough Peaks area. Impacts related to increased visitor use in the area include human health and safety when interacting with the wild horse herd, user conflicts, user displacement, road deterioration, unauthorized route creation, sage-grouse disruption and habitat deterioration and cultural and paleontological resource protection and preservation.

## **1.7 Issued not Carried Forward for Analysis**

The Interdisciplinary Team determined during the scoping process that either the following resource were not present or that there were no discernable direct, indirect, or cumulative impacts likely as a result of the Proposed Action or its Alternatives: VRM, lands with wilderness characteristics, Areas of Critical Environmental Concern, invasive species, riparian, wetland, or aquatic habitat, local forest, grassland, or shrubland communities, National Historic Trails, geology, livestock grazing, socioeconomic issues, species listed under the Endangered Species Act.

## **2.0 PROPOSED ACTION AND ALTERNATIVES**

### **2.1 Alternative I: Proposed Action**

The Proposed Action analyzed within this EA consists of removing the day-use caps for commercial businesses seeking to conduct wildlife and/or wild horse viewing and photography in the McCullough Peaks area, while limiting those commercial activities to BLM system roads noted on Map 1, (McCullough Peaks Road (BLM Road 1212) and Whistle Creek Road (BLM 1213). No seasonal timing restrictions would be placed on SRPs for the purposes of wildlife/ wild horse viewing or photography in the McCullough Peaks area.

A change to the Proposed Action between the draft and final EA is the exclusion of the proposed Backcountry Byway. In order to minimize impacts and streamline further analysis, it was decided to exclude the Backcountry Byway from the Proposed Action. Therefore, the analysis presented in chapter four will not address a Backcountry Byway, nor will it be carried forward for consideration in any other alternative.

### **2.2 Alternative II: Increased commercial day-use permits**

Alternative II consists of maintaining the current program for administration of Special Recreation Permits in the McCullough Peaks area. Day-use will continue to be allotted to businesses seeking to conduct wildlife and/or wild horse viewing and photography with the current maximum allotment of visitor use-days increased from 2,500 to 3,000. Commercial activities will be limited to BLM routes noted on Map 1. Seasonal timing restrictions for sage grouse and other species (March 1 – June 30) would be applied to SRPs for the purpose of wildlife/ wild horse viewing and photography in the McCullough Peaks area.

### **2.3 Alternative III: No Action Alternative**

Under the No Action Alternative the current program for Special Recreation Permits in the McCullough Peaks area along with the established maximum cap of 2,500 visitor use-days for commercial wild horse and/or wildlife viewing will be maintained. Commercial activities will be limited to BLM routes noted on Map 2. Seasonal timing restrictions for sage grouse and other species (March 1 – June 30) would be applied to SRPs for the purpose of wildlife/ wild horse viewing and photography in the McCullough Peaks area.

### **2.4 Conformance of Alternatives with Resource Management Plan**

The alternatives analyzed in this environmental assessment have been screened for conformance with the *Cody Field Office Approved Resource Management Plan* (RMP), approved as a component of the Rocky Mountain Record of Decision (ROD) signed September 21, 2015. Record #4150 demonstrates conformance with the RMP as it states management shall, “promote opportunities for public viewing, education, and interpretation of wild horses within the McCullough Peaks HMA.”

## **3.0 AFFECTED ENVIRONMENT**

The affected environment presented within chapter three is directly tied to the alternatives to be analyzed in this EA and relates only to those aspects of the human environment likely to be impacted as a result of one or more of the alternatives. The potential impacts resulting from alternatives considered in this EA are presented in chapter four.

### **3.1 Biological Resources**

#### **3.1.1 Fish & Wildlife Resources**

Pronghorn are the predominant big game species which occur here year round. The area is used by wintering pronghorn every winter with counts above 1,000 animals. Mule deer, mountain lion, and fur bearers occupy the area. Hawks, falcons and golden eagles nest throughout the area.

There are resident and migratory birds, the majority of birds in the sagebrush and riparian vegetative community migrate south during the winter and return with varying degrees of site fidelity. Sage sparrow, sage thrasher, Brewer's sparrow, western meadow lark, vesper sparrow and lark bunting are birds that are highly migratory and depend on sagebrush vegetation conditions to be suitable for nesting, reproduction and brood rearing.

#### **3.1.2 Special Status Species**

The entire proposed action area is in greater sage-grouse (hereafter referred to as sage grouse) habitat a BLM Sensitive Species and much of it is in primary habitat and general habitat see map 1. Primary habitat is represented on map 1 as Core Version 3 (a state designation). There are 12 leks near the roads and activity location. The area contains sagebrush obligate and dependent species. Other Sensitive Species that occur in the area include: burrowing owl, white-tailed prairie dog, Brewer's sparrow, sage thrasher, and mountain plover. There are no listed Threatened or Endangered species in the area.

#### **3.1.3 Wild Horses**

The project area includes lands within the McCullough Peaks Wild Horse Herd Management Area (HMA). The HMA boundary is located between 15 to 27 miles east of Cody, Wyoming and encompasses a mixture of approximately 120,344 acres of public, private, and state land. The topography is highly variable, ranging from mostly flat to slightly rolling foothills carved by drainages, colorful badlands, and desert mountains featuring steep slopes, cliffs, and canyons. The HMA is bordered on the south by State Highway 14-16-20, on the east by State Highway 32, on the north by Bureau of Reclamation lands, and on the west partially by grazing allotment boundary fences and natural terrain features (division between the Deer Creek and Whistle Creek drainages).

The Cody RMP contains a wild horse objective which strives to maintain a viable herd that will maintain the free-roaming nature of wild horses in a thriving ecological balance and to provide opportunity for the public to view wild horses. An additional RMP objective is to manage the McCullough Peaks HMA for an initial appropriate management level of 70 to 140 wild horses,



not counting foals, in an attempt to maintain a population of 100 adult wild horses adjusted as necessary based upon monitoring.

Over the past fifteen years, viewing wild horses in the McCullough Peaks HMA has been increasing. The McCullough Peaks general area has many multiple uses occurring on the land including, but not limited to, recreational activities, livestock grazing, communication sites, pipelines, oil and gas wells, seismic projects, gravel pits, and various wild horse related (viewing, research and management) activities. Research of horse behavior has been studied intensively during 2003 through 2006. The behavior of the horses has changed in relation to their acceptance and tolerance to humans and they appear to be more docile around humans than they once were, due to the number of visitors to the wild horse HMA. In order to provide for the safety of the public, as well as the safety of the wild horses, a viewing distance of 300 feet has been established and posted. This 300 foot distance applies to the entire HMA. However, often, this distance has not been followed and observations have shown that the wild horses appear to tolerate much closer viewing than the 300 foot distance.

The BLM has observed and documented the loss and/or abandonment of several young foals in recent years. To address concerns that the increased public pressures may have contributed to this, signs have been posted within the HMA and information included in the wild horse stipulations page of the SRPs, cautioning people about the foaling season. The wild horse stipulations have also been posted on several kiosks in or near the HMA.

## **3.2 Heritage & Cultural Resources**

### **3.2.1 Cultural Resources**

Cultural resources are any prehistoric or historic district, site, building, structure, or object considered important to a culture, subculture, or community for scientific, traditional, religious, or other purposes. Cultural resources include archeological resources, historic architectural and engineering resources, and traditional resources. Archeological resources are areas where prehistoric or historic activity measurably altered the earth or where deposits of physical remains (e.g., projectile points, pottery, or bottles) are discovered. Architectural and engineering resources include standing buildings, districts, bridges, dams, and other structures of historic or aesthetic value. Traditional resources can include archeological resources, structures, topographic features, habitats, plants, wildlife, and minerals that Native Americans or other groups consider essential for the preservation of traditional culture (BLM 2015a).

A literature review reveals that over two dozen cultural resource inventories have been conducted within or proximate to the McCullough Peaks project area. Inventories have been conducted in response to oil and gas development, range improvements, vibroseismic activities, access roads, habitat improvements, and communication sites. The previous investigations indicate a variety of prehistoric, and historic sites are present. Known historic properties include segments of the Bridger Trail, the Wiley Canal, and several prehistoric open camp sites with buried deposits that have yielded or may be likely to yield important information.

The Bridger Trail is recognized as Regionally Important Historic Trail in the newly Approved Cody Resource Management Plan. The National Register of Historic Places (NRHP) significant linear resource manifests itself in several variants (both contributing and non-contributing to NRHP eligibility) within the project area (BLM 2015b). The Bridger Trail was initially used to by-pass the more conflict ridden Bozeman Trail in order to access a gold strike in southwestern Montana. After the 1864 passage of emigrants, the trail became used as a way to move commerce between newly constructed railheads to the north and south.

### **3.2.2 Paleontological Resources**

The McCullough Peaks area is dominated by outcrops of the Eocene Willwood Formation, which represents an ancient river floodplain depositional environment. The Willwood Formation is well known as a world-class mammalian fossil deposit, and is studied by numerous universities and specialists throughout the United States and the world. The Willwood Formation contains one of the best known records of Eocene mammalian fauna and has yielded more than 1,100 fossil mammal localities, and over 100,000 mammal fossils found within the Bighorn Basin (Bown et al. 1994).

The Willwood Formation has been classified under the Potential Fossil Yield Classification system as a “PFYC=5”, having a very high potential for vertebrate and/or scientifically-significant fossil resources. Bones and teeth of multiple taxa of Eocene animals, including such well known genera as *Coryphodon* and *Hyracatherium*, have been found in this formation.

In addition, the contact between the Paleocene Fort Union Formation and the overlying Eocene Willwood Formation, a geologically-important zone known as the Paleocene-Eocene Thermal Maximum (PETM), contains a large amount of geochemical, biological and paleontological information currently being studied by many universities worldwide.

Fossils protected under the Paleontological Resources Protection Act of 2009 (PRPA) commonly weather from outcrops of the Willwood and Fort Union formations. The Cody Field Office typically attaches stipulations to surface-disturbing activities in this area to protect the fossils in the event of discovery. These stipulations may also be attached to a permit if surface disturbance is not involved, to protect such resources from illegal collecting and sale.

## **3.3 Land Resources**

### **3.3.1 Lands and Realty**

Access to the area is from US Highway 14 east of Cody to the McCullough Peaks Loop Road (BLM Road #1212, WYW-84614). The Loop Road is a BLM system road maintained for public use during portions of the year when road conditions are dry. The road is in generally good condition. BLM System Road #1213 is considered primitive and receives routine maintenance. Both BLM system roads receive no scheduled maintenance.

The area west of Whistle Creek Road BLM #1213 is part of the 119, 839 acre Travel Management Area (TMA) in the 2004 McCullough Peaks Travel Management Plan (TMP). McCullough Peaks Road #1212 and Whistlecreek Road #1213 are both systems roads, meaning

they receive routine maintenance. The included two-track trails are considered primitive and do not receive scheduled maintenance.

### 3.3.2 Recreation

Recreation management's foundation lies within the land use plan where areas are identified as recreation management areas (RMA). The RMA is a land unit where Recreation and Visitor Services (R&VS) objectives are recognized as a primary resource management consideration and specific management is required to protect the recreation opportunities. The RMA designation is based on: recreation demand and issues, recreation setting characteristics, resolving use/user conflicts, compatibility with other resource uses, and resource protection needs. RMAs are designated as either a special recreation management area (SRMA) or an extensive recreation management area (ERMA). The project area is located on BLM-administered public lands designated as a SRMA. SRMAs recognize unique and distinctive recreation values and are managed to enhance a targeted set of activities, experiences, benefits, and recreation setting characteristics, which becomes the priority management focus.

The McCullough Peaks SRMA lies east of Cody and north of U.S. Highway 14/16/20. This scenic, popular area is used by residents of Cody and Powell, Wyoming, and Park and Big Horn Counties, for uses such as viewing wild horses, sightseeing, hunting, horseback riding, mountain biking, hiking, photography, driving for pleasure (including ATVs and motorcycles), and wildlife viewing. Colorful badlands provide excellent photographic opportunities. The recreational resources present in the McCullough Peaks attracts tourists traveling to or from Yellowstone National Park also use the area, and supports several commercial permittees who provide wild horse viewing and interpretive tours in the area.

The recreational setting characteristics (RSC) within the McCullough Peak area range from rural to back-country. The following table defines the settings and each setting sub-component:

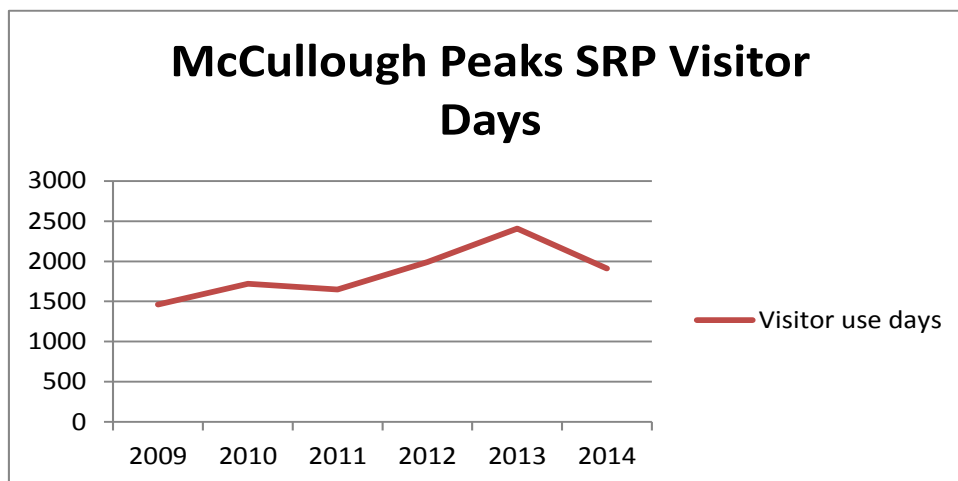
**Table 1: Recreational Setting Characteristics (RSC)**

<b>Physical Component – Qualities of the Landscape</b>	
<b>Remoteness (approx.. distance from routes)</b>	Rural, Front, Middle, and Back Country Classification. The eastern and southern boundaries lie along major highways. There are several BLM roads and numerous two-tracks and ATV trails in the SRMA area.
<b>Naturalness (landscape texture form, line, color)</b>	Front and Middle Country Classification. Natural setting may have modifications which range from being easily noticed to strongly dominant to observers within the area but not draw the attention of observers on trails and primitive routes.  Back Country Classification. Natural setting may have subtle modifications that would be noticed but not draw the attention of the casual observer wandering through the area.
<b>Facilities</b>	Rural and Front Country Classifications. Primitive and improved motorized routes and non-motorized trails may exist. Facilities and structures are readily apparent and may range from scattered to small dominant clusters.

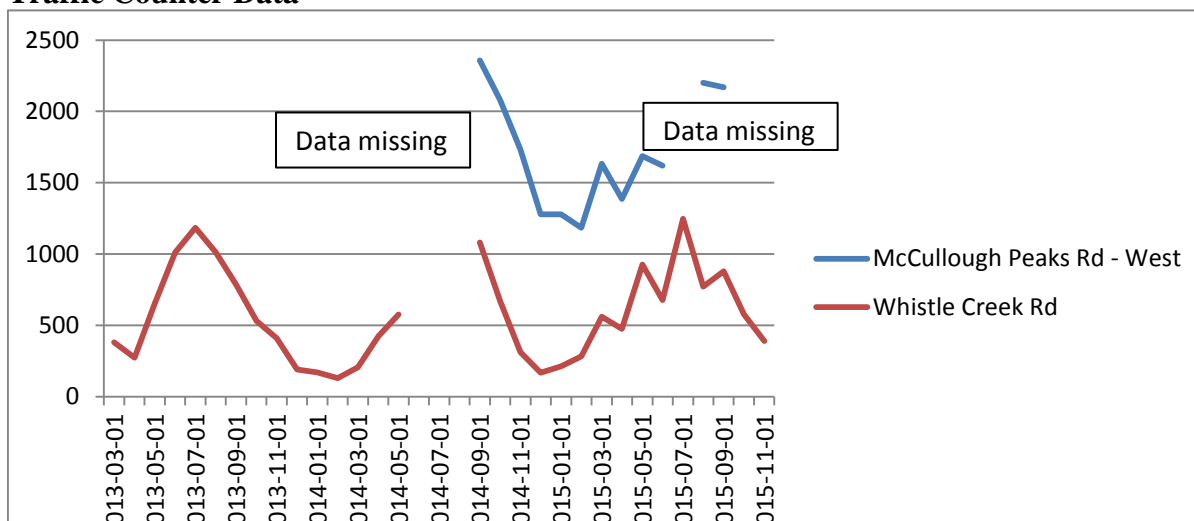
	<p>Middle Country Classification.</p> <p>Primitive motorized routes and non-motorized trails may exist.</p> <p>Facilities and structures are rare and often accessible via unimproved routes.</p>
<b>Social Component – Qualities Associated with Use</b>	
<b>Contacts (average with any other group)</b>	<p>Back Country Classification.</p> <p>Usually up to 6 encounters/day off travel routes and up to 15 encounters/day on travel routes.</p> <p>Middle Country Classification.</p> <p>Usually up to 14 encounters/day off travel routes, and up to 29 encounters/day en route.</p>
<b>Group Size (average-other than your own)</b>	<p>Back Country Classification</p> <p>Usually group size is small. 4 – 6 people per group.</p>
<b>Evidence of Use</b>	<p>Back Country Classification</p> <p>Areas of alteration uncommon. Little surface vegetation wear observed. Sounds of people infrequent.</p> <p>Middle Country Classification – Small areas of alteration. Surface vegetation showing wear with some bare soils. Sounds of people occasionally heard.</p>
<b>Operational Component – Conditions Created by Management and Controls over Recreation use</b>	
<b>Access (types of travel allowed)</b>	<p>Front and Middle Country.</p> <p>Manage the SRMA for 2-wheel drive and 4-wheel drive vehicles, ATVs, dirt bikes and non-motorized mechanized use.</p>
<b>Visitor Services (and information)</b>	<p>Middle Country.</p> <p>Personnel periodic. Rules clearly posted with some restrictions.</p>
<b>Management Controls</b>	<p>Middle Country.</p> <p>On site controls and services are present but subtle. Periodic enforcement, with an increase in BLM presence during big game hunting season.</p>

The RSC complemented by the supplemental recreational resources, primarily the wild horse herd, provides for an environment very suitable for recreationists to enjoy. Wild horse viewing has been observed as one of the dominant activities enjoyed by both residents and those visiting the area. Self-guided tours and commercial tours are observed in the McCullough Peaks area. Every year, the commercial outfitters will submit a post use report, which includes a trip log detailing their activities for the year. The trip logs act as an effective way to gauge the popular types of commercial uses in the area, determines visitor user days, identifies use trends, and assists in maintaining the current allocation. Traffic counter data is also used to track use, which the counts from both methods indicate steady visitor use, with an observed slight increase of visitor use trends. The following charts illustrate the counts from the commercial post use trip logs, and the traffic counter data.

**Table 2: McCullough Peaks SRP Visitor Days & Traffic Counter Data**



**Traffic Counter Data**



### Special Recreation Permits

BLM issues Special Recreation Permits (SRP) to manage visitor use; to protect natural and cultural resources; to achieve the goals and objectives of Field Office recreation program as outlined in a land use plan; and to authorize specific types of recreational activities. There are five types of activities for which SRPs are required: commercial use, competitive use, vending, special area use, and organized group activity and event use.

The BLM issues SRPs in the McCullough Peaks area primarily for commercial wild horse viewing tours, photography workshops, and to a lesser degree, big game hunting outfitting, which the large hunt areas include the McCullough Peaks area. The McCullough Peaks make up a small percentage of each hunt area, which is 20% of elk hunt area 65 (2013 hunt area boundary, 15% of the 2015 hunt area boundary), and 42% of antelope hunt area 78. Within the last 4 years, SRP trip logs have shown only 4 outfitting trips pursuing antelope and elk, showing 39 user days within antelope hunt area 78, and 45 days in elk hunt area 65.

**Table 3: McCullough Peaks Big Game Hunting Usage**

species	Visior User Days / Year				Total Count
<b>Antelope</b>	2014	2013	2012	2011	
<b>78</b>	4	27	0	8	<b>39</b>
<b>Elk</b>					
<b>65</b>	0	0	0	45	<b>45</b>

Currently, the BLM administers 9 SRPs specific to wild horse tours. In the last 3 years, the BLM administered 2 photography workshop SRPs, both of which are no longer active. Of the 9 active wild horse touring SRPs, 7 are managed through the Cody Field Office, the other 2 are managed through the Worland and Rock Springs Field Offices. Throughout the year, the BLM will receive calls inquiring SRP availability to conduct tours and workshops within the McCullough Peaks area. Since Cody, Wyoming, is located 50 miles east of Yellowstone National Park, the city receives high visitation during the summer months and interpretive tours provide a service to these visitors. Wild horse tours focus on educating the public about wild horses in their natural environment, how BLM manages the land and the horses, and the Adopt-a-Horse Program. The tours provide a guide service to visitors who would like to participate in this type of activity and learn more about the region, local resource management issues, and the management of wild horses. These permits have traditionally been issued for a five year period and can be renewed for subsequent periods indefinitely.

As indicated in Table 2, commercial viewing SRP trip logs indicates a decline in commercial activities after 2013. This trend was influenced by some SRP holders closing their business, or eliminating wild horse viewing and photography workshops from their SRP, as well as the BLM setting a moratorium on processing additional SRPs after the SRP use allocation exceeded threshold. The steady, and slightly increasing, trend as shown in the traffic counter chart is somewhat independent of the allocation use, which increasing or decreasing use would be, generally, independent of BLM's SRP visitor use allocation strategy. In general, the McCullough Peaks area is a popular area to visit which is demonstrated by the steady observed visitation use in the area.

### 3.3.3 Wilderness Study Areas

In 1964, Congress passed the Wilderness Act, thereby establishing a national system of lands for the purpose of preserving a representative sample of ecosystems in a natural condition for the benefit of future generations. Until 1976, most land considered for, and designated as, wilderness was managed by the National Park Service and USFS. With the passage of FLPMA in 1976, Congress directed the BLM to inventory, study, and recommend which public lands under its administration should be designated wilderness. To be designated as wilderness, an area must have the following characteristics:

**Size:** roadless areas of at least 5,000 acres of public lands or of a manageable size.

**Naturalness:** generally appears to have been impacted primarily by the forces of nature.

**Opportunities:** provides outstanding opportunities for solitude or primitive and unconfined types of recreation.

**Supplemental values:** Presence of supplemental values within an area is not a required characteristic, but values within the area are to be documented.

Wilderness reviews began in the late 1970's, which inventories had found areas containing wilderness characteristics throughout the Bighorn Basin. The McCullough Peaks area elevated to an intensive wilderness review in the 1980s, and, following the 1991 Wyoming Wilderness Study Area EIS, 24,531 acres within the McCullough Peaks area was designated as a Wilderness Study Area (WSA). WSAs are managed under the non-impairment standard to maintain and sustain the wilderness characteristics within the WSA until Congress either designated all, or portions of the area as wilderness, or releases all or portions to multiple-use.

The McCullough Peaks WSA (WY-010-335) includes 24,531 acres of BLM-administered public land and a 640 acre in-holding of state land. The WSA is located in Park County, 10 miles northeast of Cody, Wyoming and 6 miles south of Powell, Wyoming. The boundary consists primarily of roads, a major powerline, and property lines.

The WSA consists of the badlands which form the north slope of the McCullough Peaks. The terrain is characterized by sharp ridges and deeply eroded drainages. There are also large expanses of open, gentle terrain. The area is scenic and provides opportunities for solitude and primitive recreation. The interesting topography, scenic vistas, and wildlife attract visitors. Some of the recreational opportunities provided by the area include: hiking, hunting (upland bird and limited deer), viewing wildlife and wild horses, rockhounding, horseback riding, and photography. Nationally significant paleontological resources and cultural resources are present in the general area.

## **4.0 ENVIRONMENTAL EFFECTS**

Chapter four presents the direct, indirect, and cumulative impacts associated with the alternatives considered in this environmental analysis. Aspects of the human environment analyzed in this chapter are derived from the issues identified through internal interdisciplinary scoping in conjunction with public scoping. Only issues identified to be potentially impacted as a result of one or more of the alternatives considered in this EA have been analyzed. The analysis on which this chapter is based is informed by the affected environment presented in chapter three.

### **4.1 Biological Resources**

#### **4.1.1 Fish & Wildlife Resources**

##### **Alternative I: Proposed Action**

Raptors and other migratory birds would benefit from this alternative as disruption would be lessened over time during the nesting season.

Pronghorn would benefit from less disruption over time during the parturition period and consolidation of the road network to established routes assigned to commercial activities.

##### **Alternative II: Increased commercial day-use permits**

Raptors and other migratory birds would be negatively affected. Burrowing owls, golden eagles and other raptors would be further disrupted by vehicle traffic and human activity near their nests during the nesting season. Nests would be abandoned or less productive with this increased disruption.

Pronghorn would be negatively affected through increased disruption during the parturition period, which may lead to fawn abandonment, decreased fawn fitness, and a suppressed population.

##### **Alternative III: No Action Alternative**

The current level of activity from the SRPs is causing habitat degradation through new roads being created, travel on roads during wet periods, new ground being disturbed from pull outs and new roads being occupied by weeds. Weeds spreading to new locations from new sources are degrading habitat quality. Early morning and day long commercial activity is negatively affecting wildlife reproductive activity when isolation and seclusion is necessary for their success. The activities are concentrated in sagebrush habitats sensitive to disturbance and disruption. The concentration is generated from opportunities to view wild horses and the herd area they occupy. They are a large attraction for people to come visit the site for viewing purposes. Increasing activity and interest has increased the quantity of visitors impacting the habitat with vehicles and human presence. Wild animals tend to avoid and get nervous around human presence affecting their survival.



Raptors and other migratory birds would continue to be affected by disruptive activities during the nesting season. They would be less disturbed than Alternative II. Nest success would be less productive than the proposed action.

Pronghorn would continue to experience existing disruption, which may lead to fawn abandonment, decreased fawn fitness, and a suppressed population.

#### **4.1.2 Special Status Species**

##### **Alternative I: Proposed Action**

###### Sage grouse

This alternative would have a net conservation gain on sage grouse in primary and general habitat. Activities would be limited to high traffic existing gravel roads used for multiple purposes. There would be no effects from commercial activities off the gravel roads indicated on the maps where commercial activity use to consistently disrupt sage grouse would not be disrupted during the lek and brood rearing seasons from commercial activities related to wild horse viewing, interpretive and photography workshops, tours etc (commercial activity) in the long-term in these areas distant from the gravel roads.

There are 3 leks within .6 miles of these gravel roads that may continue to be disrupted and receive more traffic; however, this is a reduction of disruptive activity on 9 leks from the total 12 leks in the affected area. Nine leks would now not be affected by commercial activity while 3 will remain disrupted. This is a well-traveled road and grouse have likely already adjusted to suitable locations acceptable to them to continue their use of the lek sites. Less use off the gravel roads would also make these disrupted lek sites more suitable as traffic would not be disrupting them from all sides, but from only the current proximity to the gravel roads. These sites would be secure habitat from commercial activity.

Sage grouse would benefit from organized, predictable traffic on established routes reducing the chance of new road creation. Nest success, brood survival, and lek attendance would increase since their life cycle activities would proceed without added disruption and disturbance of commercial activities onto baseline public recreation traffic in the area. Hens can watch over their broods, be vigilant for predators and select nest sites with the optimum conditions without being affected by commercial activities. Broods are more likely to stay with the hen and not get lost when disruption is limited. Their survival would increase since being with the hen offers the most protection from predators and environmental exposure.

This area has a high potential for a large population of sage grouse. By removing the commercial activity disruption during the lek and brood rearing season across the off gravel road areas would produce more individuals through time adding to the population recovery, resilience, and viability. Habitat suitability would increase through a decline in physical disturbance from vehicles, decrease in anthropogenic disruption, decrease in weed spread, and a decrease in road creation.

#### Other Sensitive Species

These species would benefit from habitat quality and suitability in similar ways as sage grouse benefit. Sage grouse is an umbrella species- a species with large area requirements for which protection of the species offers protection to other species that share the same habitat. This means if sage grouse habitat requirements are met, the majority of species occupying this habitat will also benefit from these efforts. There would be less habitat disruption during the spring early summer period when all present Sensitive Species are conducting critical breeding and reproductive life cycle requirements.

### **Alternative II: Increased commercial day-use permits**

#### Sage grouse

This alternative would have a net negative conservation effect on sage grouse in primary and general habitat. Increased permits and continued authorization of SRPs in this area would increase disruption during the sensitive breeding, nesting, and brood rearing periods. Sage grouse have been shown to be negatively affected by traffic and human activity on leks, and in nesting and brood rearing habitats. The population would be further suppressed from an increase in permitted activities. Survival and recruitment would decrease causing a lower population into the future. The disrupting activities are so concentrated within these sensitive habitats; sage grouse would be directly affected and would further avoid the area. When sage grouse avoid an area, they do not compensate their reproduction in an area by increasing nesting hen density. They tend to not nest as the habitat is saturated with nesting territories in nearby areas. The population is expected to decrease as a result of these effects.

#### Other Sensitive Species

Habitat disruption would increase, suppressing and decreasing populations.

### **Alternative III: No Action Alternative**

#### Sage grouse

This alternative would have a net negative conservation effect on sage grouse in primary and general habitat. Maintaining current levels of disruption during the sensitive periods would continue to negatively affect the population. Populations would continue to be suppressed by the disruptive activities and populations are expected to decrease as a result of these effects.

#### Other Sensitive Species

Habitat disruption would stay the same, maintaining a suppressed population. The population would be less suppressed than Alternative II but would continue to decline.

### **4.1.3 Wild Horses**

#### **Alternative I – Proposed Action**

Wild horses are unpredictable large animals, making it dangerous for anyone, especially children to get too close. Any horse may chase, knock down, step on, kick, strike or bite another horse or even humans and dogs. Wild horses sometimes perceive the presence of a human as a challenge or a threat to food, water, foals or other band members.

In other areas where wild horses receive high visitor use it has been noted that both petting and feeding causes harmful behavior changes in horses. Horses become unafraid of humans – this is not the same as “tame”. Horses begin approaching cars and visitors, becoming more aggressive over time. Horses are attracted to roads, increasing the risk of being injured or killed by a vehicle. In searching or begging for food, horses have been known to grab objects from visitors, and bite at clothing and hands. The horses can also push visitors away from vehicles and destroy property.

It can be expected overtime that the McCullough Peaks wild horses would show similar aggressive behavior, if stipulations to prevent harassment, feeding, and petting were not applied to the Special Recreation Permits.

There is a concern that visitors could be injured by wild horses if they put themselves in a compromising situation. Wild horse related stipulations would be included to minimize disturbance to wild horses and provide safety for both humans and horses. The stipulations would include keeping a minimum distance from horses to help eliminate the potential for physical contact and injury.

#### **General Disruptive Impacts to Wild Horses from Viewing Activities:**

Unusual disturbance or increases in number of disturbances to wild horses during the reproductive period can cause disruption and interference with natural reproductive cycles and may result in reduced reproductive success and/or survival. Human activities can cause such disturbances. Large numbers of vehicles and people moving around in reproductive habitats can cause additional disturbance and stress to wild horses if these activities take place too close to the animals. Each individual species has a “personal space” distance that dictates when they will react to human activities in a negative manner and may be displaced from preferred habitat and experience physiological stress. For larger species that depend on visual and auditory senses to avoid dangers, this distance can be one to two miles.

If wild horse viewing is conducted in a manner that is considerate of and respectful to disturbance distances, then such activities can be conducted with minimal disturbance and impact to them. Recreational activities with smaller and less conspicuous vehicles and group sizes can more readily be conducted in a non-impacting way around wild horses. Larger vehicles, more vehicles and more trips with larger numbers of people can create more problems in limiting disturbance and impacts to the animals. However, following good common sense behavior etiquette and SRP stipulations designed to minimize wild horse disturbance impacts should allow wild horse viewing with even larger groups to be conducted with minimal affects to the animals

Impacts to wild horses would be reduced and minimized under Alternative I - Proposed Action because the amount of viewing area has increased greatly, in an attempt to spread out the number of visitors throughout much of the HMA. Enlarging the SRP “viewing area” also provides for the wild horses natural movement throughout a larger portion of the HMA without depriving permit holders and visitors of a chance to see a wild horse.

Continuation of the 300 feet/100 yards distance would not be expected to have any increased impact to the wild horses due to their more docile nature at this present time, given that all attached stipulations are followed as prescribed.

## **Alternative II – Continuation of Present Management**

Impacts to wild horses would be the same as under Alternative I - the proposed action. However, it would be expected that more encounters between humans and wild horses may result due to the increased number of visitors located within a smaller area.

## **Alternative III – No Action (Do Not Authorize Special Recreation Permits for Interpretive Tours and Photography Workshops)**

Impacts to wild horses would be expected to be minimized under this alternative. However, the opportunity to “guide” visitors in the proper behavior and etiquette while observing wild horses would be lost. In this case, impacts to wild horses may increase due to unregulated horse and human interaction. This may result in foal mortalities, horse euthanasia due to aggressive behavior towards humans, and human injuries or deaths.

## **4.2 Heritage & Cultural Resources**

### **4.2.1 Cultural Resources**

#### **Alternative I: Proposed Action**

Removing the cap in day-use SRP’s issued for wildlife, wild horse viewing and photography would constitute a change in previous management and may increase use of these permitted activities; however the potential to impact historic properties would be minimized by restricting the increased volume of permitted tours to existing BLM system roads, the McCullough Peaks Road (BLM #1212) and the Whistle Creek Road (BLM #1213), which are constructed improved roads that have been crowned, ditched and graveled. The proposed action will fall under the Protocol, Appendix B exemptions (BLM CyFO# 020-2016-089), due to the confinement of commercial tours being limited to existing, improved & constructed, roads where no new surface disturbance would be authorized.

Current potential impacts to cultural resources include unauthorized collection of surficial materials, and looting of buried materials. Access to areas potentially containing cultural resources would decrease, as permitted tours would only occur on the McCullough Peaks Road and the Whistle Creek Road, versus the multitude of two-tracks inner sped & currently accessed by commercial entities throughout the McCullough Peaks area, thereby minimizing the potential for unauthorized collection of surficial materials, and looting of buried materials.

Inclusion of Archaeological Resources Protection Act (ARPA) statute as a stipulation for permitted wildlife, wild horse viewing and photography activities may serve an educational role, thereby minimizing potential impacts from unauthorized collection of surficial materials, and looting of buried materials. Furthermore, including ARPA stipulation explicitly notifies SRP holders, and their cliental of the law.

### **Alternative II: Increased commercial day-use permits**

As an increase in the number (additional 500) of SRP's issued for wildlife, wild horse viewing and photography activities would no longer meet the exemption from consultation with the Wyoming State Historic Preservation Office (WYSHPO) under Appendix B., #15 of the Wyoming State Protocol (Protocol), the BLM would consult with the WYSHPO regarding the appropriate level of inventory, as per Protocol §V. B. iii. b.

Current potential impacts to cultural resources include unauthorized collection of surficial materials, and looting of buried materials. Issuance of 500 additional SRP's within areas containing cultural resources may increase the human presence, which may indirectly have potential to impact historic properties.

Direct impacts due to increased use of the commercial viewing and photography routes may occur to a number of two-tracks, which could impact the stability of these non-engineered roads in the arid and erosive McCullough Peaks geographic area, which could displace surficial cultural materials, and buried deposits if rutting or braiding occur. Consideration of both indirect and direct impacts to historic properties would be included with the WYSHPO consultation to determine appropriate level of inventory.

Inclusion of Archaeological Resources Protection Act (ARPA) statute as a stipulation for permitted wildlife, wild horse viewing and photography activities may serve an educational role, thereby minimizing potential impacts from unauthorized collection of surficial materials, and looting of buried materials. Furthermore, including ARPA stipulation explicitly notifies SRP holders, and their cliental of the law.

### **Alternative III: No Action Alternative**

Impacts to cultural resources would remain at levels similar to the existing, as no change (or increase) in SRP issuance would occur.

Under the Wyoming State Protocol, issuing special recreation permits along rivers, trails, and other specified areas where use is similar to previous permits and which would not increase the level of use and where there will be no new surface disturbance is considered an undertaking exempt from Wyoming State Historic Preservation Office consultation (Protocol §V. B. ii., & Appendix B.)

## **4.2.2 Paleontological Resources**

### **Alternative I: Proposed Action**

The Proposed Action may have little to no direct effect on in-place paleontological resources within the project area, as the surface is not proposed to be disturbed along the proposed back-country byway/seasonal routes shown on Maps 1 and 2. Increased visitor use may result in an indirect effect of more fossil hunting in the general area, which could result in an increase of illegal collecting of, or damage to, vertebrate or other scientifically-significant fossil resources.

### **Alternative II: Increased commercial day-use permits**

Alternative II would have little to no direct effect on paleontological resources in the project area, as the surface is not proposed to be disturbed by increasing the number of commercial day-use permits. Increased visitor use may result in an indirect effect of more fossil hunting in the

general area, which could result in an increase of illegal collecting of, or damage to, vertebrate or other scientifically-significant fossil resources.

#### **Alternative III: No Action Alternative**

Alternative III would have no direct or indirect effect on paleontological resources in the project area.

## **4.3 Land Resources**

### **4.3.1 Lands**

#### **Alternative I: Proposed Action**

The Proposed Action may have little to no direct effect on routine maintenance for the McCullough Peaks Road (BLM #1212) and Whistle Creek Road (BLM #1213). Maintenance and repair is done as necessary by BLM to keep the road in a serviceable condition and to prevent deterioration from natural erosion.

#### **Alternative II: Increased commercial day-use permits**

Alternative II would have little to no direct effect on road maintenance in the project area, as the surface is not proposed to be disturbed by increasing the number of commercial day-use permits.

#### **Alternative III: No Action Alternative**

Alternative III would have no direct or indirect effect on road maintenance in the project area.

### **4.3.2 Recreation**

#### **Alternative I: Proposed Action**

The proposed alternative would allow SRP holders to provide for more wild horse viewing opportunities and photography workshops within the McCullough Peaks area without reaching a visitor use threshold. Vehicles would be allowed on the McCullough Peaks road (BLM road #1212) and Whistle Creek road (BLM road #1213) (see Map 1). The majority of the visitor user days observed in the area is already established, so removing the visitor use allocation may moderately increase use from current SRP holders, and may be observed in additional user days from new SRP holders.

Impacts to recreation from removing the visitor use caps may be the potential of altering the current desired social settings from back and middle country classifications to more front country settings. These social setting alterations may be observed during peak summer use when commercial use is concentrated along the McCullough and Whistle Creek roads. The increase of SRP presence may not be observed as such from self-guided visitors due to the presence of other visitors in the area, unless user conflicts such as SRP holders blocking access, or intimidating other self-guided users occurs, which would ultimately displace them to alternative areas. This conflict is anticipated to be very low in that the BLM has not received complaints nor observed SRP holders displacing other users in the past. The increase of observed visitor use may also interfere with users' desired experiences and displace them to other areas, or impact paying clients' desired experiences by minimizing the back country settings. These impacts may be

observed along the routes designated for commercial use. Elsewhere in the McCullough Peaks area, this increase would not be observed.

Additional opportunities for commercially guided tours and photography workshops would enhance the experience for those visiting the Cody region, as well as for residents unexperienced in navigating the McCullough Peaks area or unknowledgeable of the area and the horses. By participating in these activities, clients would gain knowledge of the region and the environment and have a greater understanding of, and appreciation for, wild horses. SRP holders are required to abide by stipulations attached to their permits promoting user ethics which would aid in sustaining the area's resources. These outdoor user ethics would be communicated and displayed to the paying clients, who would become more knowledgeable and use those same principals, which would prove to be very beneficial in minimizing user created conflicts and resource impacts.

All commercial wild horse viewing and photography workshops within the McCullough Peaks area would no longer be limited from seasonal limitations. Impacts from releasing the seasonal closures would be observed from users, both SRP holders and paying clients and non-commercial users. Lifting the seasonal restriction would provide more opportunities for paying clients to learn about the McCullough Peaks area and its natural resources, especially non-residents who are visiting the area during this time wishing to participate in wild horse tours or photography workshops. However, an increase of users may be observed from non-paying customers who have historically explored the area to view the wildlife and wild horses. This increase in use would only be observed along McCullough Peaks and Whistle Creek Roads.

### **Alternative II: Increased commercial day-use permits**

Alternative II would allow SRP holders to provide for more wild horse viewing opportunities and photography workshops within the McCullough Peaks area due to increasing the visitor use allocation threshold from 2,500 to 3,000, and increasing the network of transportation (see Map 1), which include the McCullough Peaks road (BLM road #1212), the Whistle Creek road (BLM road #1213), and routes within the southern and eastern portions of the HMA. An increase in 500 additional user days may not be noticeable to the casual observer, especially taking into account the dispersed nature of the activities and intermittent visits throughout the season.

Impacts to recreation from increasing the visitor use caps may be the potential of altering the current desired social settings from back and middle country classifications to more front country settings. These social setting alterations may be observed during peak summer use when the sage grouse seasonal restrictions are lifted, and concentrated along the roads designated for SRP use. The increase of SRP presence may not be observed as such from self-guided visitors due to the presence of other visitors in the area, unless user conflicts such as SRP holders blocking access, or intimidating other self-guided users occurs, which would ultimately displace them to alternative areas. This conflict is anticipated to be very low in that the BLM has not received complaints nor observed SRP holders displacing other users in the past. The increase of observed visitor use may also interfere with users' desired experiences and displace them to other areas or impact paying clients' desired experiences by minimizing the back country settings. These impacts may be observed along the routes designated for commercial use. Elsewhere in the McCullough Peaks area, this increase would not be observed.



All commercial wild horse viewing and photography workshops within the McCullough Peaks area would be limited from July 1 through February 28<sup>th</sup> in order to manage for sage grouse resources. Impacts from the seasonal closures would be observed from SRP holders and paying clients. The seasonal restriction would prevent paying clients to learn about the McCullough Peaks area and its natural resources, especially non-residents who are visiting the area during this time wishing to participate in wild horse tours or photography workshops. However, the area is still open for self-guided visitors who wish to explore the McCullough Peaks area and view the wildlife and wild horses.

### **Alternative III: No Action Alternative**

Impacts under Alternative Three would be similar as those addressed in Alternative Two. Alternative Three will not increase the 2,500 cap, which would restrict opportunities for new commercial vendors to provide for wild horse tours and photography workshops. In addition, current SRP holders will be required to maintain their allocated user days, which would restrict additional viewing opportunities for paying clients.

Impacts from maintaining the current sage-grouse seasonal restrictions would be the same as those in Alternative Two.

### **4.3.3 Wilderness Study Areas**

#### **Alternative I: Proposed Action**

The wilderness values in the McCullough Peaks Wilderness Study Area would not be impaired by either the interpretive tours or photography workshops as proposed in Alternative One. Removing the visitor use allocation caps is not anticipated to increase user days within the WSA because nearly all commercial use is observed in the eastern portions of the McCullough Peaks area. Since 2011, photography workshop post use reports have totaled 90 total visitor use days within the McCullough Peaks area, much of which focused on the Wild Horses outside of the WSA boundaries. Horse tours are limited to the McCullough Peaks and Whistle Creek roads, of which a two-mile segment of McCullough Peaks Road which serves as the WSA boundary. Horse tour and photography workshop observations done from the high vantage points along McCullough Peaks Road would provide opportunities for tour participants to view and take photographs of the beautiful badland scenery back dropped by the Cody region flanked by the colossal Absaroka and Beartooth Mountain Ranges. Lifting the seasonal restrictions would not impact the WSA, but rather be observed from an increase of use along the McCullough Peaks road. Dispersed use from SRP activities within the WSA has historically not been observed, which will not compromise the outstanding opportunities for solitude for non-guided visitors in the WSA.

#### **Alternative II: Increased commercial day-use permits**

The wilderness values in the McCullough Peaks Wilderness Study Area would not be impaired by either the interpretive tours or photography workshops as proposed in Alternative II. Increasing the visitor use allocation caps, maintaining the seasonal restriction of March 1 through June 30, and maintaining the existing network of routes designated for commercial use is not anticipated to increase user days within the WSA because nearly all commercial use is observed



in the eastern portions of the McCullough Peaks area. Horse tours are limited to the designated routes as illustrated in Map xxxx, which all routes are located outside of the WSA, with the exception of McCullough Peaks Road (BLM# 1212), which only a two-mile segment serves as the WSA boundary. Seasonal restrictions would not impact the WSA, but rather benefit the wilderness characteristics within the WSA by enhancing the outstanding opportunities for solitude for non-guided visitors in the WSA.

There are no anticipated impacts to the WSA from Alternative II.

### **Alternative III: No Action Alternative**

Tours and workshops will continue to allow visitors to observe badland and surrounding scenery from McCullough Peaks Road's high vantage point along the McCullough Peaks WSA. Impacts to the WSA would be the same as those analyzed in Alternatives One and Two.

## **4.4 Cumulative Impacts**

### **4.4.1 Past Actions**

The general area contains livestock grazing authorizations and facilities; utility lines; pipelines; gravel pits; communication sites; oil and gas wells (both active and plugged and abandoned); oil and gas leases; commercial, competitive events, and organized group recreational use authorized under Special Recreation Permits; and roads and two-track vehicle routes. Seismic exploration projects have been conducted in the past. Research projects related to geology and paleontology have occurred in the area. The area has been used for a variety of recreational activities by the public for which no Special Recreation Permit is required. Recreational uses have been permitted under SRPs in the past, including wild horse viewing tours, photography workshops, and big game outfitting. The horse tours and photograph SRP visitor user days had reached the allocation limit, from which that time, visitor user days had declined due to allocation caps and businesses either eliminating wild horse viewing opportunities, or closed the SRP. No allocation cap has been set for the big and trophy game outfitters and guides, which has observed approximately 84 user days from the past four years. Commercial viewing tours, outfitting and guiding, and photography workshops continue to be observed in the McCullough Peaks area.

The 2004 McCullough Peaks Travel Management Plan designated specific linear features for motorized use, including McCullough Peaks Road BLM #1212. The area east of Whistlecreek Road BLM #1213 is limited to existing roads and trails per the 2015 Cody RMP. While area is limited to existing, off route travel has been observed in the area, which leads to an increase in, and concentration of linear features in the area.

### **4.4.2 Present Actions**

Several Special Recreation Permits are either up for renewal as well as new requests for SRPs, or requests to increase SRPs current allocation have been submitted to the BLM. Several livestock reservoirs may be maintained each year for the next few years as funding and workload allow. Additional water development for wild horse use may be installed over the next few years. The general area is used for many different types of recreational activities including: mountain

biking, hiking, sightseeing, horseback riding, hunting, wild horse and wildlife viewing, vehicle use (ATVs, motorcycles, pickups, etc.), and various other activities. A programmatic Environmental Assessment was recently completed to examine big and trophy game hunting and fishing throughout the Cody Field Office, including wilderness areas and wilderness study areas (DOI-BLM-WY-020-EA15-19). No significant impacts were identified in the programmatic EA. The facilities and uses mentioned under “Past Actions,” above would continue to be present including oil and gas leases and interest in oil and gas development.

Comprehensive Travel and Transportation Management is currently in effect in the western part of McCullough Peaks, and is scheduled for completion in the area east of Whistlecreek Road BLM #1213. To anticipate CTTM decisions, route inventory is expected to be completed in this area in 2016. The route inventory may further delineate current and emerging routes visitors use to explore the area.

#### **4.4.3 Reasonably Foreseeable Actions**

Additional requests for Special Recreation Permits are expected. These are expected to include commercial recreational activity, competitive events, and organized group activities. A local organization is planning a wild horse visitor center on private land near the project area. Future energy related activities and facilities are expected such as oil and gas leasing, seismic exploration, and oil and gas development. Future research projects on topics such as geology and paleontology are expected. The activities and facilities listed under “Present Actions” and “Past Actions” would also be expected to continue in the future.

Future Travel Management planning is anticipated in this area. Under the CTTM process, routes will be analyzed according to the designation criteria listed in 43 CFR 8342.1. Several of the routes east of Whistle Creek Road BLM #1213 are not managed under a current Travel Management Plan. These routes will need to be considered for their long-term suitability according to CTTM guidelines.

## **5.0 PREPARATION AND REVIEW**

### **5.1 Interdisciplinary Team**

<b><u>Name</u></b>	<b><u>Title</u></b>
Crume, Kierson	Archeologist
Harrell, Destin	Wildlife Biologist
Johnson, Bradley	Planning and Environmental Coordinator
Hatle, Tricia	Supervisory Range Management Specialist/ Wild Horse & Burro Specialist
Hurley, Gretchen	Geologist
Patterson, Nancy	Outdoor Recreation Planner
Rau, Paul	Outdoor Recreation Planner

### **5.2 Reviewers**

<b><u>Name</u></b>	<b><u>Title</u></b>
Krause, Chad	Assistant Field Manager
Minnick, Delissa	Field Manager

## 6.0 SOURCES CITED

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## Appendix A

### CODY FIELD OFFICE - DAY USE ADDITIONAL STIPULATIONS

(General Terms 1 - 13 (a – m) on SRP Form 2930-2)

#### **Administration**

14. Nothing in this permit will be construed as a license for the permittee, employees, or clients to use areas of the public lands which are otherwise restricted or closed.
15. Issuance of a permit by BLM does not guarantee legal access to public lands. Access to public land by the permittee is assured only when legal access for the general public is available. Where legal public access is not available, it is the permittee's responsibility to obtain permission from the landowner(s) to travel through or use private lands.
16. The permittee is responsible for the prompt repair of any damages to utilities, fences and other improvements. The permittee will take every reasonable precaution to protect natural resource values and any improvement on both private and public lands. Gates will be left open or closed, as they were found (except highway gates which should be closed).
17. Photography/Filming Stipulation. The BLM does not require a film permit for casual, non-commercial photography on public lands. However, if models or props are used that are not part of the natural resource, or if the location is not a place that the public is generally allowed or additional administrative costs are likely, a permit will be required. Any commercial filming activities, including production of videos, movies, television, or documentaries, will require a film permit. Contact the local BLM office at: (307) 578-5900 for more information.
18. For administrative purposes, including compliance checks, the permittee will allow the BLM and its cooperators, reasonable administrative access to private lands which are owned or utilized by the permittee for the permitted activity.
19. A BLM Trip Log indicating entry onto public lands and exit off public lands, will be completed, signed, and submitted to the BLM to support permittee requests for a deduction for nonpublic land use that differs from the actual percent of BLM administered public land ownership status within the authorized use area. If the permittee would like to request off-site lodging deductions, copies of the lodging receipts will be provided to the authorized officer at the time the BLM Post Use Report is submitted.
20. The permit holder will be required to provide a recordkeeping procedure narrative (outline) that illustrates who and how the recreation activity was compiled to determine data integrity. Permit holders will be required to provide documentation in the form of copies of receipts with their Post Use Report to claim deductions for lodging and transportation costs.
21. The permit holder must maintain the following internal accounting records pertaining to the permit for a minimum of three years after the expiration of the permit:
  - a. W-2 records or similar records of employment for all employees conducting trips

- under the permit;
  - b. records of all financial relationships with booking agents or advertisers;
  - c. records of all receipts or compensation including payments, gratuities, donations, gifts, bartering, etc., received from any source during activities conducted under the permit;
  - d. a record of all payments made by the permittee and claimed as a deduction in the permit holder's fee submission, and a complete and reconcilable accounting system that includes the following items:
    - i. customer cash receipt deposit ledger or statements (these include the deposit transactions with continuous sum totals); and
    - ii. bank statements/ledgers, or the deposit slip ledger receipts.
22. The BLM retains the right to verify permit compliance from the books, correspondence, memoranda, and other records of the permit holder, and from the records pertaining thereto of a proprietary or affiliated company during the period of the permit and for 3 years thereafter regardless of physical location.
23. Permit holder agrees to make all relevant books, documents, papers, and records of his/her operation available to BLM upon request (as outlined in 43 CFR Subpart 2932.55) for analysis by qualified representatives of BLM and other agencies authorized to review BLM's permitting activities.
24. Field offices may audit a permit holder any time they feel it is necessary and do not need to wait for the Government Accounting Office (GAO) required audit of every 6 years.
25. BLM may enforce penalties in the event permit holder fails to comply with BLM/audit requests for documents, including the following:
- a. Suspend SRP until permit holder complies and provides all documentation to the BLM or Auditor.
  - b. Put permit holder on probation for a period of one or more years. During this time, permit holder may be required to provide tax records to verify revenue, revenue ledger, bank statements to prove gross revenue/receipts, and request that no co-mingling of revenue be undertaken.
  - c. Give permit holder a warning that their permit will be reviewed periodically for compliance.
26. The permit holder must submit a Post Use Report to the authorized officer for every year the permit is in effect. If the post use report is not received by the established deadline, the following late fee schedule will be initiated.
- a. More than 15 days but less than 30 days after the due date: \$125.00;
  - b. More than 30 days after the due date, but less than 45 days: \$250.00;
  - c. Post Use Reports submitted more than 45 days after the due date may result in criminal, civil, and/or administrative action to protect the interest of the United States.
  - d. After 180 days, if the bill has not been paid, then it will be turned over to the U.S. Treasury Department for collection.
  - e. Any bill that has accrued late fees or interest will be paid applying the money

collected first to interest and penalties, then to principle.

- f. Failure to pay your fees on time could result in your permit being suspended, not renewed, or terminated.

## 27. Safety Measures

- a. Every person serving as a guide on public land must at a minimum be trained and currently certified in Basic First Aid and CPR. Documentation must be on file at the permittee's headquarters and be available for BLM review if necessary.
- b. The following equipment must be carried on all commercial trips:
  - i. A first aid kit adequate to accommodate each activity, group or subgroup
  - ii. Adequate repair kits and spare supplies appropriate for the trip and activity
- c. Unless specifically authorized in the permit, the discharge of firearms is allowed only for legal pursuit of game animals by a licensed hunter.
- d. Permittee will take appropriate safety precautions and be aware of the presence of other recreational users when conducting tours during the fall hunting seasons. Providing fluorescent orange vests to any customer who would be outside of the vehicle during this time period is recommended.
- e. The use of explosives and fireworks is prohibited.

## Resources

- 28. Permittee will be responsible for knowing and complying with Off-Road Vehicle (ORV) designations and restrictions that may exist within the area of operation. The permittee will be required to comply with any seasonal area closures. Permit issuance does not waive any ORV use restrictions, whether local, State, or Federal. ORV information is available at the local Field Offices.
  - a. Travel on wet or muddy roads will be avoided to prevent rutting and soil erosion. If the vehicle creates ruts in excess of 4 inches deep, the road conditions will be deemed too wet to travel.
  - b. The McCullough Peaks Wilderness Study Area and portions of the Wild Horse Herd Management Area are managed under a travel management plan. All motorized use is limited to designated roads and trails. Please abide by all posted regulations.
  - c. Motorized use within the McCullough Peaks Wilderness Study Area is limited to designated primitive routes. OFF-ROAD USE WITHIN THE WSA IS STRICTLY PROHIBITED. Please abide by all posted regulations.
- 29. Heritage and Cultural Resources, Standard Stipulation The holder of this authorization shall immediately bring any objects or resources of cultural value discovered as a result of operations under this authorization to the attention of the authorized officer. The holder shall suspend all activities in the vicinity of such a discovery until notified to

proceed by the authorized officer.

- a. Cultural Resources, Standard Stipulations. The holder is responsible for informing all persons associated with this project that they may be subject to prosecution for knowingly damaging, altering, excavating or removing any archaeological, historical, or vertebrate fossil objects or site. If archaeological, historical, Native American, or vertebrate fossil materials are discovered, the holder is to suspend all operations that further disturb such materials and immediately contact the Authorized Officer. Operations are not to resume until written authorization to proceed is issued by the Authorized Officer (AO).
- b. The authorized officer will evaluate, or will have evaluated, such discoveries not later than five working days after being notified, and will determine what action shall be taken with respect to such discoveries. The decision as to the appropriate measures to mitigate adverse effects to significant cultural or Paleontological resources will be made by the authorized officer after consulting with the holder.
- c. The holder is responsible for the cost of any investigations necessary for the evaluation, and any mitigative measures required by the Authorized Officer. The AO will provide technical and procedural guidelines for the conduct of evaluation and mitigation. Upon verification from the AO that the required evaluation and/or mitigation has been completed, the holder will be allowed to resume operations.
- d. Human Remains. If human remains are discovered or suspected the holder shall suspend operations immediately, physically guard the area, and notify BLM immediately.
- e. Archaeological Resources Protection Act Stipulation. No person may excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to an issued permit.

### 30. Paleontological Resources Protection Stipulations

1. **Collecting:** The project proponent/Operator is responsible for informing all persons associated with this project including employees, contractors and subcontractors under their direction that they shall be subject to prosecution for damaging, altering, excavating or removing any vertebrate fossils or other scientifically significant paleontological resources from the project area. Collection of vertebrate fossils (bones, teeth, turtle shells) or other scientifically significant paleontological resources is prohibited without a permit. Unlawful removal, damage, or vandalism of paleontological resources will be prosecuted by federal law enforcement personnel.

2. **Discovery:** If vertebrate or other scientifically significant paleontological resources (fossils) are discovered on BLM-administered land during operations, the Operator shall suspend operations that could disturb the materials, stabilize and protect the site, and immediately contact the BLM Cody Field Office Manager (Authorized Officer). The Authorized Officer would arrange for evaluation of the find within an agreed timeframe and determine the need for any mitigation actions that may be necessary. Any mitigation would be developed in consultation with the Operator, who may be responsible for the cost of site evaluation and mitigation of project effects to the site. If the operator can avoid disturbing a discovered site, there is no need to suspend operations; however, the discovery shall be immediately brought to the attention of the Authorized Officer.

3. **Avoidance:** All vertebrate or scientifically significant paleontological resources found as a result of the project/action will be avoided during operations. Avoidance in this case means “No action or disturbance within a distance of at least 100 feet of the outer edge of the paleontological locality”.

### Wildlife Stipulations.

30. **Avoid Sensitive Wildlife-** Avoid areas and disturbance of reproductive wildlife with young during early spring/summer periods. Do not participate in any behavior which will alter the natural tendencies of the wildlife. For example, your actions should not, in any way, disrupt their current activity or entice investigatory activity by any wildlife. If your presence causes wildlife to move away from you, do not pursue them. The permittee will be required to comply with any seasonal area closures.

31. **Nest Avoidance-** All raptors, eagles and migratory bird nests will be avoided and not disturbed or harmed.

### 32. Livestock/Horses

- a. Authorization for use of livestock for transportation is temporary and will not establish a priority for future use.
- b. The permittee is not authorized to allow livestock under theirs or their clients control to graze on public lands. Any forage provided to livestock on public lands by the permittee or their clients must be certified weed free by the County Weed



and Pest Control Office. Evidence of proper certification must be available upon request.

- c. All animals will be under control in transit to protect wildlife, other livestock, and range forage. There will be no harassment of livestock, wildlife, wild horses, or destruction of private and public improvements such as fences and gates.
- d. Do not tie, corral, or picket animals within 200 feet of any lake, stream, spring, main trail, or developed facility. Livestock shall not be tied up for extended periods to trees. If necessary to keep stock tied for any length of time, select a site where damage to vegetation and root systems is minimized. Relocate your tie down locations as necessary to reduce potential for compaction.
- e. If any domestic horses associated with this permit escape and are loose in the herd area, the permittee will be responsible for the gather costs for that horse(s) during the next scheduled BLM wild horse gather. In the event that a domestic horse escapes in the herd area, gathering of wild horses to capture the domestic horse is prohibited.
- f. No mares are allowed to be used for riding or packing within the McCullough Peaks Wild Horse Herd Management Area.
- g. All horses used in the herd area should be free from any illnesses. If at any time a horse is suspected of any illness the permittee will be required to remove said horse from the area and to have it inspected by a licensed veterinarian to determine the cause of illness.

33. **McCullough Peaks Wild Horse Herd Management Area (HMA) Wild Horse-Related Stipulations**

**For your safety, and the safety of the horses, please obey the following stipulations and do not approach, touch, or feed the McCullough Peaks wild horses.**

- a. Harassment, injury, removal, or causing the death of a wild horse is punishable by fines or imprisonment (43 CFR 4770 and the Wild Horse and Burro Act).
- b. All SRP permit holders, employees, clients and affiliates visiting the McCullough Peaks HMA will not approach closer than 300 feet to any wild horses. (300 feet is 1 football field in length) (100 yards or 91.44 meters). See the fiberglass marker “300 feet” away from the “Keep the Mustang Wild” sign.
- c. Approaching mustangs during foaling season, February through July, could result in foal abandonment.
- d. All SRP permit holders, employees, clients and affiliates visiting the HMA will remain 300 feet from any water source when observing the wild horses. This will allow free access to the water by the horses.

- e. Do not attempt to approach, feed, or touch these animals. Do not engage in any activity that interrupts wild horses' current behavior. If your presence causes horses to move away from you or to stop carrying out their normal activities (sleeping, grazing, playing, etc.), you are too close. Move away until you are no longer a curiosity or a threat and you have re-established the proper distance between you and the horses.
- f. Do not allow dogs to chase the wild horses.
- g. **DO NOT ATTEMPT TO ASSIST OR HANDLE SICK OR INJURED ANIMALS.**
  - i. Wild horses are subject to natural mortality from injury or illness without medical intervention. Non-viable horses may be euthanized to end suffering by authorized personnel only.
  - ii. Report sick or injured animals, or violations, to the Bureau of Land Management:
    - 1. Wild Horse Specialist (307) 578-5925 Work  
(307) 899-1155 Cell
    - 2. Cody Law Enforcement Ranger (307) 578-5931 Work  
(307) 899-6561 Cell
    - 3. Cody Field Office (307) 578-5900 7:45 a.m. – 4:30 p.m. M-F
- h. Vehicle tours and photography workshop vehicles would be limited to the authorized routes shown on a map that would be attached to the Special Recreation Permit. Permittee must comply with the Off Highway Vehicle use restrictions in the area.
- i. Hiking would be allowed within ¼ to ½ mile from the vehicle, provided that the minimum distance between people and wild horses is maintained, as specified in the wild horse stipulations.
- j. Prior to each use season, the permittees would be required to contact the BLM Wild Horse Specialist. This would allow the BLM to provide the permittees with up-to-date information on the BLM wild horse program including any changes in the management situation or upcoming events. This would help ensure that accurate information regarding the BLM and the management of the wild horses is available to the permittees and the visitors who participate in the guided activities. This information would be available to the permittees for use during the commercial operation. Permittees would distribute only BLM-provided or approved educational materials to his customers. A stipulation would be applied to the permit stating that the permittees shall not use advertising that attempts to portray or represent his/her activities as being conducted by the BLM or present the BLM in a negative or misleading tone. Prior to each season of use, annually,

a mandatory field tour along the proposed tour route would be scheduled with the permittee, the wild horse specialist, and the recreation planner.

34. Overnight Use

- a. If an emergency spike camp is needed within the Cody Field Office area, the permittee must notify the Cody Recreation Planner and provide a legal description (township, range and section), or GPS coordinates of the spike camp within 30 days after use.

35. Fires

- a. All types of open fires will be built only in areas that are presently free of trees and shrubs. A fire pan or fire blanket is recommended for all ground fires. Use of gas stoves or charcoal briquettes is encouraged, and packing of fuels may be necessary to supplement naturally available firewood. Open fires may be prohibited during certain periods depending on fire danger.
- b. No fires will be left unattended. Permittee is solely responsible for all fires which permittee's employees or clients start.
- c. Fires and stoves are prohibited within old cabins or historic structures.
- d. Cutting or gathering firewood from historic structures or from standing trees (alive or dead) is prohibited.
- e. Permittee may be held responsible for fire suppression costs resulting from wildfire caused by permittee, employees, or clients.
- f. Wildfire should be reported immediately to the nearest BLM office. Permittee is responsible for informing employees, clients, and participants of the current fire danger and required precautions that may be placed in effect by the BLM or the State of Wyoming. **The Cody Dispatch can be reached at (307) 578-5740.**
- g. Permittee will monitor and adhere to Federal, State, and County fire restrictions.

36. Sanitation and Aesthetics

- a. Permittee shall dispose of refuse resulting from the permitted use, including waste material, garbage, and rubbish of all kinds in the following manner, and shall guard the purity of streams and other bodies of water:
  - i. Tin cans, spent brass, bottles, metal, foil, and other un-burnable materials will be packed out, not buried. All refuse not burned is also to be packed out.
- b. Day use toilet needs will be accomplished through the use of the cat-hole technique. Cat-holes must be placed well above the water line and at least 200 feet away (70 adult steps) from all water sources, and 6" to 8" deep.
- c. No waste or byproducts shall be discharged if they contain any substances in

concentrations that would result in substantial harm to fish and wildlife or to human water supplies, including streams, reservoirs, and lakes.

- d. Help us clean up public lands by packing out all trash. Picking up trash left by less thoughtful visitors helps maintain the scenic beauty of your public lands. Littering will not be tolerated.

## **GUIDELINES**

### **Guidelines for Use of Public Lands**

The BLM recognizes and endorses the use of the principles of Leave No Trace and Tread Lightly as appropriate wildland ethical behavior for the recreating public. The principles of these two programs are listed below.

#### **LEAVE NO TRACE**

##### **Plan Ahead and Prepare**

Know the area and what to expect, travel in small groups, and select appropriate equipment.

##### **Camp and Travel on Durable Surfaces**

Concentrate use in popular areas, spread use in remote areas, avoid places where impact is just beginning.

##### **Dispose of Waste Properly**

Reduce litter at the source by repackaging food, pack it in, pack it out, dispose of trash and garbage properly. Practice good sanitation - dispose of human waste responsibly, minimize soap and food scraps in waste water, avoid contaminating water sources when washing, dispose of fishing and hunting waste appropriately.

##### **Leave What You Find**

Minimize site alterations, avoid damaging trees and plants, leave natural objects and cultural artifacts for others to discover and enjoy.

##### **Minimize Use and Impact From Fires**

Be aware of regulations and weather conditions. Stoves are often the best option. If you must build a fire, use existing fire rings. Collect only dead and downed wood or bring your own.

##### **Respect Wildlife**

Avoid disturbing wildlife, enjoy wildlife at a distance, store food properly.

##### **Be Considerate of Other Visitors**

Reduce your impact on other visitors, respect the privacy of others, keep noise to a minimum.

#### **TREAD LIGHTLY!**

Travel only where permitted.

Know what areas/roads/trails are open to vehicles.

Respect the rights of others.

Be considerate of others on the roads/trail that you travel. Vehicles yield the right-of-way to bicycles, hikers, and horses.

Educate yourself.

Obtain information on your destination before you go. If you have questions contact the managing agency of the area(s) you are visiting.

Avoid streams, meadows, wildlife areas, etc.

Be aware of wildlife habitat. Crashing through underbrush or across open meadows upsets the balance of nature, destroys nesting sites, and disturbs wildlife.

Drive and travel responsibly.

Use common sense. Avoid muddy roads and trails and stay out of meadows and wetlands.

These principles of Leave No Trace and Tread Lightly! programs are recommended as a guide to minimizing signs of visitation to the expansive and varied BLM-administered public lands. These principles are intended to support and complement BLM regulations. Additional information on the Leave No Trace and Tread Lightly! programs is available at the Cody Field Office.

## Appendix B

### SRP MONITORING REPORT

Cody Field Office

Monitored by: \_\_\_\_\_

Date: \_\_\_\_\_

1. Method of Monitoring: \_\_\_Aircraft \_\_\_Vehicle \_\_\_Foot \_\_\_Other

2. Type of SRP activity (*hunting, horseback tours, poker run, etc*): \_\_\_\_\_

3. Who was contacted, if any? \_\_\_\_\_

a. Does the person have a copy of permit? ☐ Yes ☐ No

b. Are stipulations attached to permit? ☐ Yes ☐ No

4. Number of clients with SRP Permittee: \_\_\_\_\_

5. Area Monitored:

a. Location: T. \_\_\_\_\_ N. R. \_\_\_\_\_ W, Section(s) \_\_\_\_\_

b. Area description (*which may include Wyoming Game and Fish Hunt Area by species*)

\_\_\_\_\_  
\_\_\_\_\_

6. SRP Observations (for example, hunting, fishing, OHV, Horse tours etc.) Document SRP observations; attach map and photos.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Action Taken:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_